APPENDIX A.

Alcoholic Beverage Control Law, Section 108 (New York State):

> "No licensee except the holder of a winery license shall keep or permit to be kept or consumed on the licensed premises any alcoholic beverage except the alcoholic beverages which he is permitted to sell under the terms of the license issued to him."

Title XI, U. S. C. A., Section 93J:

> "Debts owing to the United States or any State or subdivision thereof as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty or forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law."

Title XI, U. S. C. A., Section 35:

> "Debts not affected by a discharge. A discharge in bankruptcy shall release a bankrupt *from all his provable debts* except such as (first) are due as a tax levied by the United States, the State, County, District or Municipality in which he resides; * * *."

APPENDIX B.

Opinion at Motion Term.

Hartford Accident & Indem. Co. v. *Casalino.*—Motion to cancel and discharge judgment against bankrupt. The respondent, as surety, gave its bond pursuant to agreement with the movant. The bond was required by the State Liquor Authority upon issuing a license to movant to insure her compliance with the Alcoholic Beverage Control Law. That the security was in the nature of a penalty cannot be disputed. The movant was found guilty of violation of the aforesaid law and the bond was declared forfeited. The surety thereupon paid the state the full amount of the bond and brought suit against the movant for that amount. From a reading of the complaint in that action and considering the fact that the four-month contractual limitation contained in the bond had expired before the commencement of the action it is clear that the surety enforced its rights to reimbursement rather than as a subrogee of the state. Sometime after the surety obtained judgment in the action the movant went into bankruptcy. The surety did not assert its judgment at the proceeding but has waited and now seeks to levy execution on the judgment after movant's discharge in bankruptcy.

It is movant's contention that the judgment debt was discharged in bankruptcy. It is respondent's contention that the bond was a penalty due the state and under the Bankruptcy Act (U. S. C. A. sec. 93-j), was not dischargeable in bankruptcy, citing *In re Abramson* (210 Fed. 878).

The Court finds that the debt was dischargeable in bankruptcy under the circumstances. As the debt was paid in full before bankruptcy the surety became the creditor

and the state was eliminated (*Wright* v. *Rumph*, 238 Fed. 138). While it is true that the surety was subrogated to the rights of the state it never sought to enforce those rights and there is some question as to whether it could have in the view of the four-month limitation contained in the bond (*Continental Cas. Co.* v. *Nat. Slovak Sokol*, 269 N. Y. 283).

The surety having obtained its judgment on the theory of indemnification it is entitled to no better position than that of a general creditor. The protection of the section 93-j will be transposed from the state to the surety only if the surety stands in the place of the state and not when the surety has acted on its own agreement with the debtor (*In re Friedlin*, 21 Fed. Supp. 542). Accordingly the motion is granted. Settle order.